

ORIGINAL

MEMORANDUM



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TO: Docket Control

FROM: Steven M. Olea  
Director  
Utilities Division

*EA for SMO*

2010 AUG 11 P 4: 31

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: August 11, 2010

RE: IN THE MATTER OF THE APPLICATION OF TELESphere ACCESS, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE, LOCAL EXCHANGE, FACILITIES-BASED LONG DISTANCE AND LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20675A-09-0214)

Attached is the Staff Report for the above referenced application. The Applicant is requesting approval to provide the following services:

- Resold Long Distance Services
- Facilities Based Long Distance Services
- Resold Local Exchange Services
- Facilities Based Local Exchange Services

Staff is recommending approval of the application with conditions.

SMO:AFF:kdh

Originator: Armando Fimbres

Attachment: Original and Thirteen Copies

Arizona Corporation Commission

DOCKETED

AUG 11 2010

DOCKETED BY	
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SERVICE LIST FOR: TELESphere ACCESS, LLC  
DOCKET NO.: T-20675A-09-0214

Mr. Kristopher Twomey  
Counsel to Telesphere Access, LLC  
1725 I Street, N.W., Suite 300  
Washington, District of Columbia 20006

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

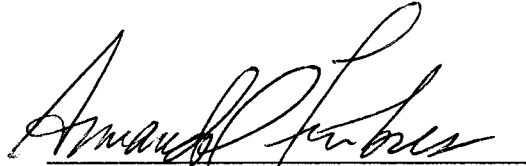
TELESPHERE ACCESS, LLC  
DOCKET NO. T-20675A-09-0214

IN THE MATTER OF THE APPLICATION OF TELESPHERE ACCESS, LLC  
FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY  
TO PROVIDE RESOLD LONG DISTANCE, LOCAL EXCHANGE,  
FACILITIES-BASED LONG DISTANCE AND LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES

AUGUST 11, 2010

## STAFF ACKNOWLEDGEMENT

The Staff Report for Telesphere Access, LLC, Docket No. T-20675A-09-0214, was the responsibility of the Staff member listed below. Armando Fimbres was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide resold long distance, facilities-based long distance, resold local exchange; facilities-based local exchange; and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in black ink, appearing to read 'Armando Fimbres', is written over a horizontal line.

Armando Fimbres  
Public Utility Analyst V

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## 1. INTRODUCTION

On May 6, 2009, Telesphere Access, LLC ("Telesphere Access") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, facilities-based long distance, resold local exchange, and facilities-based local exchange services on a statewide basis in the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("ACC" or "Commission") for a determination that its proposed services should be classified as competitive.

On May 21, 2009, Staff issued its First Data Request. On June 10, 2009, Telesphere Access provided its response to Staff's First Data Request.

On July 20, 2009, Staff requested supplemental information via pertaining to Staff's First Data Request, question STF 1.5. On July 24, 2009, Telesphere Access provided its supplemental response pertaining to Staff's First Data Request, question STF 1.5

On March 25, 2010, Staff issued its Second Data Request. Telesphere responded immediately. On May 5, 2010, Staff issued its Third Data Request. Telesphere responded to Staff's Third Data Request via email on July 26, 2010.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive, if the Applicant's initial rates are just and reasonable and if approval of the Applicant's CC&N should be conditioned.

## 2. REQUESTED SERVICES

Telesphere Networks Ltd. ("Telesphere Networks") is the parent company of Telesphere Access and was formed in 2000 as a wireless Internet Service Provider ("ISP"), primarily serving business customers. In 2003-2004, Telesphere Networks also began to offer interconnected VoIP and wireline broadband internet services to its business customers. In 2006 Telesphere Networks began to shift its focus to interconnected VoIP and wireline broadband internet. The business shift was substantially completed in 2007. Telesphere Networks formed Telesphere Access, LLC in 2009 in order to obtain a Competitive Local Exchange Carrier ("CLEC") license to better serve its business customers.<sup>1</sup>

Telesphere Access states that it will provide resold long distance, facilities-based long distance, resold local exchange and facilities-based local exchange on a statewide basis. Telesphere Access will deploy a facilities-based local exchange network that supports and is optimized for the transmission of Voice over the Internet Protocol ("VoIP")-originated traffic. It intends to provide services to business customers only as confirmed by the removal of all tariff references to residence services at the request of Staff.

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<sup>1</sup> Telesphere response to STF 1.2

In response to Staff's data requests, Telesphere also explained that over time, the "Applicant will provide carrier services for the calls originated by its affiliate, Telesphere Networks, LLC, as well as other long distance carriers. In addition, Applicant will provide data services to end users by collocating digital subscriber line access multiplexer and equipment for T-1 lines in incumbent local exchange carrier central offices."

### **3. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

Telesphere Access applied for telecommunications authority in the state of Nevada<sup>2</sup> on June 6, 2009 and is now authorized to provide service in Nevada. Telesphere Access filed in Colorado<sup>3</sup> on September 1, 2009; the application is pending. Telesphere Access also plans to apply in Minnesota, Texas and Utah<sup>4</sup> before the end of 2009. Telesphere Access stated in its application that it has not been denied service authority in any state.

The Telesphere Access Chief Executive Officer and direct reports<sup>5</sup> have over 100 years of combined telecommunications and related technology experience. Executive experiences spans wireline and wireless industries. Most recently the attention of Telesphere Access executives has been focused on broadband and VoIP services.

Based on the information submitted by the Applicant and subsequent Staff research<sup>6</sup>, Staff believes that Telesphere Access possesses the technical capabilities to provide the services it is requesting the authority to provide.

### **4. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

Telesphere Access informed Staff that on September 20, 2006, Rally Capital, LLC ("Rally"), as Telesphere Networks' secured (and only) lender, accelerated the conversion of Telesphere Networks' debt into equity. All debt was eliminated with this transaction. As a result of this conversion, Rally acquired a controlling interest in Telesphere Networks' capital stock. Over 90 percent ownership of Telesphere Networks resides with Rally and three firms – GC Investments, LLC, Hawkeye Investments LLC, Hawkeye Investments II, LLC.

Formed on March 26, 2009, Telesphere Access, a wholly-owned by Telesphere Networks, is unable to provide financial statements for the preceding two years, as typically provided by CC&N applicants. Telesphere Access reported Total Assets and Total Shareholders Equity of \$200,000 with zero operating income as of May 31, 2009. Due to the limited Telesphere Access financial information and Telesphere Access's stated intention to not rely on its parent for financial resources, Staff requested financial statements for the parent, Telesphere

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<sup>2</sup> Staff was informed by Telesphere via email dated August 18, 2009, that Nevada certification was received on July 28, 2009.

<sup>3</sup> Response to data request STF 1.8, updated via email on October 27, 2009

<sup>4</sup> Response to data request STF 1.8, updated via email on October 27, 2009

<sup>5</sup> Acting Chief Operating Officer, General Counsel, and Secretary; Chief Financial Officer; Chief Technology Officer; Vice President of Finance; Vice President, People Development; Director of Marketing

<sup>6</sup> Staff research consists of general internet searches, FCC website searches and review of Telesphere's home page

## Networks.

For the period ending December 31, 2008, Telesphere Networks reported Total Assets of \$6,083,033, Shareholder Equity of \$3,131,913 and Net Income of (\$9,327,914).

The Applicant lists conditions under which advance payments may be required for services in its proposed Tariff No. 1, Section 2.5. The Applicant's Tariff No. 2, Section 2.65 states that it does not require advances or collect deposits. Staff believes that advances, deposits, and/or prepayments received from the Applicant's customers should be protected by the procurement of either a performance bond or an Irrevocable Sight Draft Letter of Credit ("ISDLC"). The Applicant should be granted the discretion to procure either the performance bond or the ISDLC. Since the Applicant is requesting a CC&N for more than one kind of service, the amount of a performance bond or the ISDLC for multiple services is an aggregate of the minimum bond or the ISDLC amount for each type of telecommunications service requested by the Applicant. The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirements are \$10,000 for resold long distance (for those resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance and \$100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$25,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the deposits is within 10 percent of the total minimum performance bond or ISDLC amount. Further, measures should be taken to ensure that the Applicant shall not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

Staff recommends that the Applicant procure a performance bond or the ISDLC equal to \$235,000. The minimum performance bond or the ISDLC amount of \$235,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or the ISDLC amount should be increased in increments of \$117,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$23,500 of the performance bond or the ISDLC amount. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or the ISDLC.

Staff further recommends that proof of the above mentioned performance bond or an ISDLC be docketed within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. Staff also recommends that the company notify Staff through a compliance filing when it begins serving customers. The original bond or Letter of Credit should be filed with the Commission's Business Office and copies of the bond or Letter of Credit with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission.



The Commission may draw on the bond or Letter of Credit on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the bond or Letter of Credit funds, as appropriate, to protect the Applicant's customer and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.

## **5. ESTABLISHING RATES AND CHARGES**

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company indicating that its net book value or fair value rate base at the end of its first 12 months of operation would be \$50,000.

Telesphere Access submitted Tariff No. 1 and No. 2 with its application. Revisions to both tariffs were submitted to Staff during June and July of 2009. Staff has reviewed these rates and believes they are comparable to the rates charged by competitive local carriers, local incumbent carriers and major long distance carriers operating in the State of Arizona. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value rate base information provided should not be given substantial weight in this analysis.

## **6. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

Issues related to the provision of that Local Exchange service are discussed below.

### **6.1 NUMBER PORTABILITY**

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal

laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

## *6.2 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE*

Telesphere Networks Ltd. ("Telesphere Networks") is the parent company of Telesphere Access. Telesphere Networks was formed in 2000 as a wireless Internet Service Provider ("ISP"), primarily serving business customers. In 2003-2004, Telesphere Networks also began to offer interconnected Voice over the Internet Protocol ("VoIP") and wireline broadband internet services to its business customers. In 2006, Telesphere Networks began to wind down its wireless ISP business in order to focus on interconnected VoIP and wireline broadband internet. The wind down of the wireless ISP business was substantially completed in 2007. Telesphere Networks formed Telesphere Access, LLC in 2009 in order to obtain a Competitive Local Exchange Carrier ("CLEC") license to better serve its business customers.

Telesphere Access has stated it will deploy a facilities-based local exchange network that supports and is optimized for the transmission of VoIP-originated traffic<sup>7</sup>. Thus Applicant intends to serve customers using fixed VoIP technology

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

## *6.3 QUALITY OF SERVICE*

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

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<sup>7</sup> Response to data request STF 1.12; Staff understands VoIP-originated traffic to be traffic from local exchange customers served with VoIP technology.

#### *6.4 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE PROVIDERS*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

#### *6.5 911 SERVICE*

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

#### *6.6 CUSTOM LOCAL AREA SIGNALING SERVICES*

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

### **7. REVIEW OF COMPLAINT INFORMATION**

The Applicant states that it has neither had an application for service denied, nor had its authority to provide service revoked in any state. There are, and have been, no formal complaint proceedings involving the Applicant. There have not been any civil or criminal proceedings against the Applicant. Consumer Services reports no complaint history within Arizona.

The Applicant indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years. Staff's research did not reveal any issues related to the top executives in Telesphere Access.

Staff's research revealed that on September 9, 2007, the FCC Enforcement Bureau assessed a forfeiture of \$16,000 to Rally for the unauthorized transfer of control. In response to

Staff's inquiry via email, Telesphere Access provided an explanation on July 24, 2009, summarized by Staff below.

"On September 20, 2006, Rally Capital, LLC ("Rally"), as Telesphere Networks' secured (and only) lender accelerated conversion of Telesphere Networks' debt into equity. As a result of such conversion, Rally acquired a controlling interest in Telesphere Networks' capital stock, thus effecting a change of control. Financial circumstances at that time required the parties to move swiftly to improve Telesphere Networks' financial position, which was significantly strengthened as a result of the conversion. (All debt was eliminated.) Shortly after the conversion, in a conversation with its regulatory counsel, Telesphere Networks realized that an application for transfer of control of Telesphere Networks' Section 214 license should have been filed with the FCC. Less than 30 days after the conversion, on October 12, 2006, Telesphere Networks and Rally filed a consolidated application with the FCC for the transfer of control of the Section 214 license.

On October 27, 2006, the International Bureau of the FCC granted Telesphere Networks special temporary authority to provide service under the control of Rally pending approval of the application for transfer of control. (The domestic section 214 special temporary authority was granted on October 25, 2006.)

On November 30, 2006, the Wireline Competition Bureau of the FCC granted the application for the transfer of control of the domestic section 214 license.

On December 7, 2006, the transfer of control to Rally for the international section 214 authorization was granted.

On June 15, 2007, the FCC Enforcement Bureau notified Rally that it would investigate the transfer of control of the Telesphere Networks' section 214 licenses without prior authorization and requested certain information from Rally about Rally and about Telesphere Networks.

On June 29, 2007, Rally provided all documents requested by the Enforcement Bureau.

On September 20, 2007, the Enforcement Bureau assessed a forfeiture of \$16,000 to Rally for the unauthorized transfer of control. Rally paid the amount due.

Telesphere regrets the inadvertent omission of this information from the application. Neither Telesphere nor any of its officers has been involved in any other investigations or inquiries before any state or federal regulatory commission, administrative agency, or law enforcement agency during the last 24 months."

## **8. COMPETITIVE SERVICES ANALYSIS**

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

### **8.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES**

#### **8.1.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

The local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

#### **8.1.2 The number of alternative providers of the service.**

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

#### **8.1.3 The estimated market share held by each alternative provider of the service.**

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLECs and local exchange resellers have only recently been authorized to offer service they have limited market share.

#### **8.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the Applicant, as defined in A.A.C. R14-2-801.**

None in Arizona.

#### **8.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

**8.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.
- b. One in which new entrants will be dependent upon ILECs:
  1. To terminate traffic to customers.
  2. To provide essential local exchange service elements until the entrant's own network has been built.
  3. For interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

**8.2 COMPETITIVE SERVICES ANALYSIS FOR INTEREXCHANGE SERVICES**

**8.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in this market and, as such, will have to compete with those companies in order to obtain customers.

**8.2.2 The number of alternative providers of the service.**

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

**8.2.3 The estimated market share held by each alternative provider of the service.**

The large facilities-based interexchange carriers (AT&T, Sprint, MCI, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

**8.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

None.

**8.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the ILECs offer similar intraLATA toll services.

**8.2.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

**9. RECOMMENDATIONS**

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

**9.1 RECOMMENDATIONS ON THE APPLICATION FOR A CC&N**

Staff recommends that Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from Telesphere Access indicating that its net book value or fair value rate base at the end of 12 months of operation would be \$50,000. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other wholesale transport providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
9. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process.

1. The Applicant shall docket a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. ;
2. The Applicant shall:
  - a. Procure a performance bond or an irrevocable sight draft Letter of Credit equal



to \$235,000. The minimum bond or draft amount of \$235,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$117,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$23,500 of the bond amount or IDLOC amount; and

- b. File the original performance bond or irrevocable sight draft Letter of Credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a decision in this matter or 10 days before service to end-user customers is commenced, whichever comes first. The original performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is default of its obligations arising from its Certificate. The Commission may use the performance bond or irrevocable sight draft Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers;
  - c. Staff also recommends that the Company notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Fund. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204 (B).

Furthermore, Staff recommends that approval of the Application be conditioned on the following:

1. That, given the limited financials provided by Telesphere Access on its own behalf, the parent, Telesphere Networks Ltd, should be required to pledge its financial resources until such time as Telesphere Access is able to file two (2) entire years of financial statements on its own behalf.
2. That Telesphere Access' application be approved based upon its representation to the Commission that Telesphere Access will be providing local exchange service to end-users in Arizona. Should Telesphere Access not provide service directly to

end-user customers, it shall notify the Commission and file for cancellation its CC&N.

9.2 *RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.